

## EMTEL TERMS OF BUSINESS

These terms and conditions set out the terms and conditions on which EMtel will provide the Services to the Customer with whom we make a Contract. By using the Services the Customer agrees to the following terms and conditions to the exclusion of all other terms and conditions that you may purport to apply.

### 1. DEFINITIONS

1.1 The following definitions apply to the Services to which the Customer agrees to take under any Contract (unless the context requires otherwise):

“Charges” means the charges and/or call rates for use of the Services as set out in the Price List;

“Contract” means a contract entered into in accordance with clause 2.1 comprising the Order Form posted or faxed to us, these terms and conditions and the Price List and where a Customer having an existing Contract orders additional items by telephone and that order is accepted by us that transaction shall be deemed to be an addition to the existing Contract;

“Customer Equipment” means apparatus belonging to the Customer not forming part of the EMtel equipment but which may be connected to the EMtel equipment;

“Customer” means: (i) in the case of a sole trader, the person; or (ii) in the case of any other form of business the company, partnership or other business, whose details are inserted on the Order Form forming part of the Contract;

“EMtel Equipment” means any apparatus or equipment provided by EMtel or any third party to the Customer at the Site to enable provision of the Service under any Contract;

“EMtel” “we” “us” mean EMtel Limited (registered number 04980840) whose registered office is at Lyndhurst, 1 Cramer Street, Long Eaton, Nottingham, NG10 1NJ, and/or its agents (and “our” shall be construed accordingly);

“Installation date”	means the date when the Service is installed in the Site;
“Order Form”	means EMtel’s standard order form from time to time
“Price List”	means the list(s) of Charges current at the time the Customer uses the Service as notified to the Customer from time to time;
“Service”	means the Service(s) specified in the accepted Order Form and/or any other service EMtel agrees to provide the Customer;
“Site”	means the Customer’s Site where the Service is to be received;
“Wholesale Carrier”	means British Telecommunications PLC or such other wholesale provider of lines or communications services as is used by us;

- 1.2 The headings in these terms and conditions are inserted only for convenience and shall not affect its construction.
- 1.3 Where appropriate words denoting a singular number only shall include the plural and vice versa and references to the masculine gender shall include the feminine and neuter genders and vice versa.
- 1.4 Reference to any statute or statutory provision includes a reference to the statute or statutory provision as from time to time amended, extended or re-enacted.

**2. WHEN A CONTRACT BEGINS**

- 2.1 A Contract begins when one of our directors confirms to the Customer our acceptance of an Order Form.
- 2.2 The Customer hereby confirms that: (i) the director or person who agreed or completed the Order Form forming part of the Contract has the authority to act on behalf of the Customer and bind the Customer to the Contract; (ii) all details of the Customer which were inserted on that Order Form by that director or person acting on the Customer’s behalf are accurate and up-to-date; and (iii) by that director or person agreeing or completing that Order Form on the Customer’s behalf, the Customer agrees to be bound by any Contract.

### **3. EMTEL TELECOM SERVICES**

- 3.1 EMtel agrees to provide the Customer with the Service via the indirect access autodialler and/or carrier pre-selection access method(s) and, where appropriate, with autodialler equipment required to access the Service as specified on the Order Form.
- 3.2 EMtel shall be entitled to change the technical specification of the Service, provided that such changes do not materially affect the performance of the Service, without notifying or seeking the consent of the Customer.
- 3.3 The Service is made available to the Customer on the condition that the Customer does not: (i) without our prior written consent, re-supply, re-sell or otherwise make the Service available to any person on an arms-length commercial basis; or (ii) use the Service or allow the Service to be used for any purposes outlined in clause 4.4 below.
- 3.4 We may select and at any time change any carrier or other service provider for the purposes of providing the Service. The Customer hereby irrevocably authorises us to give all notices, nominations and other authorisations that are necessary for us to provide the Service.
- 3.5 The Customer hereby irrevocably authorises us to act on the Customer's behalf in all dealings with the operator of any telecommunications network or system in connection with any matter that enables us to provide or to continue to provide the Customer with the Service.
- 3.6 We cannot guarantee that the Service will be free of faults or interruptions, timely or secure to the extent that the Service may be affected by things we cannot control, such as (without limitation) network capacity, physical obstructions or atmospheric conditions.
- 3.7 We shall provide the Service with reasonable skill and care but if the Customer experiences a problem or suspects a fault the Customer should first telephone our customer services team. We shall not in any circumstances be responsible for any call out or other charges the Customer incurs from the Wholesale Carrier or any other third party telecommunications network or systems operator as a result of any problem or fault with the Service.
- 3.8 If the Customer has a query or complaint regarding the Service the Customer may contact our customer services team. We may monitor or record telephone calls to or from us for security purposes and in order to improve our standards of customer service. The Customer may also refer any complaints regarding the Service to OFCOM.
- 3.9 Specific Services are subject to the applicable provisions for that Service set out in clause 13

#### **4. THE CUSTOMER'S RESPONSIBILITIES**

- 4.1 It is the Customer's responsibility to ensure the compatibility of the Service with any monitored alarm system(s) that the Customer may have and the Customer should check this with its monitored alarm system provider(s). If provision of the Service is suspended for any reason and the Customer uses our carrier pre-selection access method to access the Service, this will affect the operation of the Customer's monitored alarm system(s).. We do not accept any liability in connection with the Customer's use of a monitored alarm system with the Service except for liability for death or personal injury caused by our negligence.
- 4.2 The Customer shall:
- 4.2.1 ensure that the Service is used in accordance with any Contract and any other instructions we give to the Customer from time to time;
  - 4.2.2 ensure that any equipment used by the Customer in conjunction with the Service conforms to the relevant standards and approvals;
  - 4.2.3 hold such licences as are required under the Telecommunications Act 1984 (including any amendments thereto) to connect with EMtel equipment and to receive the Service;
  - 4.2.4 ensure the safe use and custody of all equipment provided by EMtel;
  - 4.2.5 ensure that EMtel has such rights of access and such facilities as EMtel reasonably requires to perform its obligations under any Contract;
  - 4.2.6 comply with EMtel's reasonable instructions to modify its equipment in order to receive the Service;
  - 4.2.7 return all equipment provided by EMtel upon termination of the Contract; and
  - 4.2.8 supply EMtel with all information and assistance which may reasonably be required for the provision of Service.
- 4.3 The Customer must at all times keep any password or PIN number for the Customer's account confidential and secure, and the Customer must tell us immediately if any such password or PIN number is disclosed to any unauthorised person. The Customer acknowledges that: (i) we may disclose any information in connection with the Customer's account to anyone who correctly quotes the Customer's password or PIN number; and (ii) our information announcement may be heard by anyone accessing the Service.
- 4.4 The Customer shall not use, nor allow any other(s) to use, the Service: (i) for any improper, immoral or unlawful purpose; (ii) to send a communication which is, or is intended to be, a hoax call to emergency services, or which is defamatory, offensive, abusive, obscene or menacing; (iii) to violate or infringe any right of, or to cause unwarranted inconvenience or anxiety to, any other

person; (iv) in such a way that may damage or effect the operation or quality of the Service or of any telecommunications system used to provide the Service; or (v) fraudulently or illegally.

- 4.5 If the Customer or any other person using the Service does not comply with any provision of this clause 4, the Customer shall indemnify us for any claims, losses, damages, costs, liabilities and expenses (including, without limitation, any legal costs and expenses) which we may suffer or incur as a result of any such non-compliance. If the Customer discovers that someone else has used the Service supplied to the Customer without the Customer's or our permission, the Customer must notify our customer services team at the first possible opportunity, otherwise the Customer shall be liable for any losses suffered or incurred by the Customer as a result
- 4.6 The Customer shall not assign or transfer the Contract or any part of it without our prior written consent.

## **5. SUSPENSION OF THE SERVICE**

- 5.1 We may, in our sole discretion and upon giving the Customer written notice, suspend the Service without any liability to the Customer if we:
- 5.1.1 are entitled to terminate the Contract for any reason;
  - 5.1.2 are required to do so in order to avoid breaching any of our obligations to any of our third party suppliers;
  - 5.1.3 believe the Service is being used in connection with any illegal or improper purpose;
  - 5.1.4 reasonably believe that the Customer will fail to pay any amount due under any Contract;
  - 5.1.5 need to carry out work relating to the upgrading or maintenance of the Service or associated components (provided EMtel has given the Customer as much notice as is reasonably practicable in the circumstances); or
  - 5.1.6 is obliged to comply with an order, instruction or request of government, an emergency service organisation, or other competent administrative authority, including OFCOM.
- 5.2 The Customer shall reimburse EMtel for all reasonable costs and expenses incurred as a result of such suspension and any re-commencement of the Service as appropriate where suspension is implemented as a result of any act or omission of the Customer.

## **6. FAULT RESOLUTION**

- 6.1 The Customer shall notify us of any material fault in the Service and we shall use all reasonable endeavours to remedy the fault as quickly as practicable.

- 6.2 At the Customer's request, we may agree to work outside our normal business hours and the Customer shall then pay our reasonable charges for complying with such request.
- 6.3 The Customer may be charged for any repair work and any reasonable costs we incur if such repair work: (i) results from the Customer's own act or omission; or (ii) is requested by the Customer but we find it to be unnecessary.

## **7. LIABILITY**

- 7.1 Subject to clauses 7.2 and 7.3 our total liability (whether in contract, tort, negligence or otherwise howsoever arising) to the Customer in connection with any Contract and/or provision of the Service shall be limited to the higher of: (1) the Charges paid by the Customer in the preceding 12 months of that Contract; or (2) the sums we receive under a claim against our professional indemnity policy in respect of such liability.
- 7.2 We will not in any event be responsible or liable for: (1) any fault, damage or maintenance to the Customer's telephone line(s); or (2) any indirect or consequential loss, damage, costs or expense of any kind and however caused whether arising under contract, tort, negligence or otherwise; or (3) any loss of profit, loss of revenue, loss of business, loss of contract(s), loss of anticipated savings, loss of goodwill, loss or corruption to data or other economic loss, whether direct or indirect and even if we have been advised that it may occur.
- 7.3 Nothing in these terms shall serve to limit our liability in respect of: (i) death or personal injury caused by or arising from our negligence; or (ii) fraudulent misrepresentation.
- 7.4 We: (i) give or make no warranties, conditions, guarantees or representations as to the quality or fitness for a particular purpose of the Service or any other warranties, conditions, guarantees or representations whether express or implied, or in writing, except as expressly stated in the Contract; and (2) exclude all liability for the accuracy (or inaccuracy) of any material or other information provided or made available by us relating to the Service.

## **8. CHARGES AND PAYMENT**

- 8.1 Unless we agree otherwise by us in writing payments are to be made to us by direct debit. We may vary the Charges at any time by giving not less than one month's written notice to the Customer.
- 8.2 Charges shall accrue from the date on which the Customer commences use of the Service and shall be invoiced monthly in arrears. Any fixed charges shall be invoiced monthly in advance.
- 8.3 Each invoice shall be paid by the Customer within 14 days from the date of the invoice without any set-off or deductions.

- 8.4 If the Customer pays any charges due to us: (i) other than by direct debit (unless we have agreed to this in writing) or (ii) by cheque, credit card, debit card or direct debit and the Customer's approved financial institution refuses to make payment; or (iii) in a currency other than sterling; we will charge the Customer for any bank charges, approved financial institution fees and/or extra administration costs (which may include third party charges) that we incur as a result.
- 8.5 Interest shall accrue on overdue invoices from the due date until payment in cleared funds at the rate specified by the Late Payment of Commercial Debts Act 1998.
- 8.6 If the Customer does not pay an invoice on time, we may charge our reasonable direct costs incurred in pursuing payment in addition to interest under clause 8.5.
- 8.7 All charges which are periodic in nature shall, where relevant, be prorated on the basis of a 30-day month for the first and last calendar month of the supply of the Service.
- 8.8 All sums due to us are exclusive of Value Added Tax and any other applicable sales tax or duty which shall be invoiced at the prevailing rate. The Customer shall pay any Value Added Tax due to us upon presentation of a valid invoice.
- 8.9 The Customer agrees: (i) that call charges shall be calculated by reference to data recorded or logged by us and that our records are conclusive evidence of use of the Service by the Customer and the Charges incurred as a result; (ii) any use of the Service by any person is deemed to be authorised by the Customer; and (iii) we will invoice the Customer, and the Customer is responsible, for payment of any Charges arising from any such use, unless the Customer notifies our customer services team at the first possible opportunity that someone is using the Service without the Customer's permission or there is clear evidence of fraud.
- 8.10 If the Customer disputes any invoice, the Customer must notify us in writing of the dispute (providing us with sufficient detail to investigate the matter or determine whether the Customer's dispute is genuine and reasonable) prior to the due date for the invoice. If we determine (at our sole discretion): (a) that the Customer's dispute is not genuine or reasonable, the Customer must pay the invoice in full in accordance with clause 8.3 above, plus any interest charged on the full invoiced sum in accordance with clause 8.5 above; or (b) that the Customer's dispute is genuine and reasonable, the Customer must pay the undisputed part of the invoice in accordance with clause 8.3 above and we will both use all reasonable endeavours to resolve the dispute as quickly as possible. If any such dispute is resolved: (1) such that the Customer still owes us money the Customer must pay all sums owed to us within 14 days of resolution of the dispute, plus interest equivalent to clause 8.5 above from the date payment of the disputed invoice was due; or (2) such that we owe the Customer money, we will (at our sole discretion) re-pay or credit on the next invoice sent to the Customer following resolution of the

dispute any amount overpaid by the Customer. We will each bear our own costs in resolving any dispute under this clause 8.10.

- 8.11 The price for the Voice Service requires the Customer to make at least the minimum volume of calls each month specified on the Order Form. If the Customer makes less than that minimum volume of calls in any month a charge will be made for the difference between the calls actually made and that minimum volume.
- 8.12 If the Customer rents a line from us but in any month makes no calls from that line or routes calls on that line through another supplier we reserve the right to charge the Customer a surcharge of £5 for that month.

## **9. CREDIT LIMIT / SECURITY PAYMENT**

- 9.1 We may, at our sole discretion and at any time, impose a credit limit on the Customer's account and/or require payment of a security deposit, pre-payment or interim payment by the Customer. For the avoidance of doubt, the Customer is and will remain responsible for all Charges incurred by the Customer under or in connection with any Contract including those exceeding the Customer's credit limit from time to time.

## **10. TERMINATION OF THE CONTRACT**

- 10.1 The Customer may terminate the Contract at any time by giving to EMtel not less than 30 days notice in writing. On any termination of the Contract by the Customer in accordance with this clause 10.1, the Customer shall pay to EMtel:

10.1.1 all outstanding invoices; and

10.1.2 any third party costs and charges (including cancellation fees) reasonably and necessarily incurred by us in connection with the provision of the Service to you which we are unable to recoup from the relevant third party or (due to such termination) from you; and

10.1.3 such sums which amount to the balance of rental payments which would continue to be payable for the remainder of the term of the Contract as specified in the Order Form (if the Contract had not been so terminated); and

10.1.4 compensation for the loss suffered by EMtel as a result of such termination, such loss being determined by us having regard to all relevant circumstances; and

10.1.5 any other sums which are or become due to EMtel or to which we are entitled by way of damages.

- 10.2 We may terminate the Contract:

10.2.1 at any time by providing 30 days prior written notice; and



10.2.2 forthwith following any suspension of Service.

10.3 Either party may terminate the Contract forthwith if the other:

10.3.1 has committed a material breach which is incapable of remedy;

10.3.2 has committed a material breach which is capable of remedy but which it fails to remedy within 15 days of a written request to do so;

10.3.3 becomes unable to pay its debts for the purposes of section 123 of the Insolvency Act 1986;

10.3.4 commits any act of bankruptcy or compounds with its creditors, or a petition or a receiving order in bankruptcy is presented or made against it, or a petition for an administration order is presented in relation to it, or a resolution or a petition to wind up is presented otherwise than for a solvent reconstruction or amalgamation, or a receiver, administrative receiver or administrator is appointed; or

10.3.5 enters into an arrangement or composition with its creditors.

10.4 Termination of the Contract for any reason shall not relieve the Customer of its obligation to pay any Charges incurred by the Customer under or in connection with the Contract or affect in any way the continuation in force of clauses 7, 8 and 11.

## **11. DATA PROTECTION**

11.1 The information that the Customer provides or which we hold about the Customer (whether or not under our contract(s) with the Customer) may be used by us and/or agents to:

11.1.1 identify the Customer when they make telephone enquiries;

11.1.2 help administer, and contact the Customer about improved administration of, any accounts, services and products provided by us previously, now or in the future;

11.1.3 carry out marketing analysis and customer profiling (including with transactional information) and create statistical and test information;

11.1.4 contact the Customer by any means (including mail, email, telephone or text or multi media messages) about other services and products offered by us and carefully selected partners. We will only contact the Customer in this way if the Customer has previously indicated their consent; and

11.1.5 help us to prevent and detect fraud or loss.

11.2 We may disclose information we hold about the Customer to third parties (a) for the purpose of providing services requested by the Customer, (b) as part of the process of sale of one or more of our businesses, (c) where we are

obliged to do so for legal or regulatory purposes, or (d) as part of legal proceedings or prospective legal proceedings. These third parties may be located outside the European Economic Area in countries which do not have the same standards of protection for personal data as the UK.

11.3 We will check your details with fraud prevention agencies. If the Customer provides false or inaccurate information and we suspect fraud, we will record this. We and other third party organisations may use the search records to:

11.3.1 help to make decisions on credit or credit related services for the Customer;

11.3.2 trace debtors, recover debt, prevent fraud and to manage your accounts; and

11.3.3 check the Customer's identify to prevent money laundering unless the Customer gives us satisfactory proof of identity.

11.4 The Customer should also note that communications with the Customer (including phone conversations and emails) may be monitored and recorded by us for quality assurance, legal, regulatory and training purposes.

11.5 In connection with any Contract we may carry out credit and fraud prevention checks with one or more licensed credit reference and fraud prevention agencies. Information from the Order Form and payment details of your account may be recorded with one or more of these agencies and may be shared with other organisations to help make credit decisions about the Customer.

11.6 If the Customer provides false or inaccurate information to us and we suspect fraud, we will record this and may share it with third parties. We and other credit organisations may also use technology to prevent and detect fraud.

11.7 By entering into any Contract, the Customer expressly agrees to the use of personal data for the purposes described above.

## **12. GENERAL**

12.1 We may use sub-contractors to perform our obligations under the Contract.

12.2 All equipment we provide shall remain our property.

12.3 We may, on one week's prior written notice to the Customer, be entitled to delete routing on lines which have not used the Service in the previous 6 months.

12.4 If any provision of the Contract is held by a court or any competent government agency or authority to be invalid or unenforceable, the remainder of the Contract shall to the extent possible remain valid and enforceable.

- 12.5 In the event that the Service fails and the Customer has to use the services of another organisation, we shall not be responsible for any charges that the other organisation should make.
- 12.6 Neither party shall be in breach of the Contract for any delay or failure to carry out its responsibilities under the Contract or any loss or damage that is caused by an event beyond its reasonable control (event of Force Majeure). Such events include, but are not limited to, acts of God, acts of terrorism, lightning damage, fires, deficient power supplies, labour disturbances, loss of service on exchange lines provided by other telecommunications operators and any acts or omissions of government, highways authorities, other telecommunications operators or third parties generally.
- 12.7 If an event of Force Majeure preventing a party from performing its obligations under a Contract lasts for a continuous period of more than 2 months, the other party may give notice terminating the Contract. Neither party shall have any liability in respect of termination of the Contract due to an event of Force Majeure.
- 12.8 Subject to clause 8.1, we may vary these terms and conditions at any time by not less than one month's notice by posting the changes on our website and, where reasonably practicable, giving the Customer reasonable prior notice. We will only vary these terms and conditions if we have a valid reason, for example to reflect changing arrangements of any operator of telecommunication network or system over which we provide the service or a change in legal, regulatory or business requirements. If any variation of these terms and conditions is likely to cause material detriment to you: (1) we will also notify you of the variation in writing or by your chosen method of contact; and (2) you shall have the right to terminate the Contract with immediate effect by giving us written notice. The Customer agrees that, if the Customer decides to use the service after any variation(s) to these terms and conditions have been posted on our website or, in the case of a variation that is likely to cause material detriment, notified to you, the Customer will be bound by the terms and conditions as varied.
- 12.9 Failure by either party to exercise or enforce any right under the Contract shall not deprive either party of the right to exercise or enforce any rights under the Contract on any later occasion.
- 12.10 A person who is not a party to a Contract has no right under the Contracts (Rights of Third Parties Act 1999) to enforce any term of that Contract, but this does not affect any right or remedy of a third party which exists or is available apart from under that Act.
- 12.11 Any notice shall be delivered personally or pre-paid first class post or by fax or email to the address, fax number or email address provided for such purposes.

- 12.12 Except in the case of fraudulent misrepresentation, the Contract expresses the entire understanding of the parties in relation to the Service and replaces any and all former agreements, understanding, offers and representations (both written and oral) relating to the Service.
- 12.13 EMtel is a member of the Communications and Internet Services Scheme (CISAS). The Customer should first raise any complaint with us, but if we are unable to resolve it to the Customer's satisfaction within eight weeks of raising it with us and is an individual or a company employing less than 10 employees the Customer can refer the complaint to the CISAS for resolution. More information about the CISAS can be found on the scheme's website [www.cisas.org.uk](http://www.cisas.org.uk)
- 12.14 Any Contract shall be governed by English law and subject to the provisions of clause 12.13 the parties irrevocably submit themselves to the exclusive jurisdiction of the English courts.

### **13 UK CALL SERVICE AND ANY CALL SERVICE**

#### **13.1 For both the UK Calls and Any Call Services**

13.1.1 calls included within the service are billed by the minute, and part of a minute is rounded up to the next whole minute,

13.1.2 any minutes not used within the calendar month for which they are purchased are not carried forward to any subsequent month but are lost,

13.1.3 any calls **not** included within the service and any part of a call within the service exceeding 60 minutes will be charged by the minute and billed at our business tariff, details of which are available on request.

13.2 The UK Calls Service applies only to local and national land line calls made within the United Kingdom (national calls being to numbers starting with the prefix 01, 02 or 03)

13.3 The Any Call Service applies to those calls specified in clause 13.2 and also to calls to UK mobile telephones but not to the 3G network or any further network that may be introduced in the UK in future. On the Any Call Service at least 35% of the minutes used in each month must be used on calls to numbers specified in clause 13.2.